



DEPARTMENT OF COMMERCE

International Trade Administration

[A-552-802]

Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce (“Department”) is conducting the sixth administrative review of the antidumping duty order on certain frozen warmwater shrimp (“shrimp”) from the Socialist Republic of Vietnam (“Vietnam”) for the period of review (“POR”) February 1, 2010, through January 31, 2011. As discussed below, we preliminarily determine that sales have been made below normal value (“NV”). If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (“CBP”) to assess antidumping duties on entries of subject merchandise during the POR for which the importer-specific assessment rates are above de minimis.

EFFECTIVE DATE: [Insert date of publication in the Federal Register.]

FOR FURTHER INFORMATION CONTACT: Toni Dach or Seth Isenberg, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-1655 or (202) 482-0588, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2005, the Department published in the Federal Register the antidumping duty order on frozen warmwater shrimp from Vietnam.¹ On February 1, 2011, the Department

¹ See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam, 70 FR 5152 (February 1, 2005)

published in the Federal Register a notice of opportunity to request an administrative review of the Order for the period February 1, 2010, through January 31, 2011.²

From February 25, 2011, through February 28, 2011, we received requests to conduct administrative reviews from the American Shrimp Processors Association (“ASPA”), the Domestic Producers,³ and certain Vietnamese companies. On March 31, 2011, the Department published in the Federal Register the notice of initiation of this administrative review.⁴

On October 20, 2011, the Department published in the Federal Register a notice extending the time period for issuing the preliminary results by 90 days.⁵ On January 20, 2012, the Department published in the Federal Register an additional notice extending the time period for issuing the preliminary results by 30 days.⁶

On May 15, 2011, the Department received a letter from Quoc Viet Seaproducts Processing Trading Import and Export Co., Ltd. (“Quoc Viet”) indicating that it made no shipments of subject merchandise during the POR. On May 31, 2011, the Department received similar letters from Nam Hai Foodstuff and Export Company Ltd. (“Nam Hai”) and Vinh Loi Import Export Company (“Vinh Loi”). Of the 68 companies/groups upon which we initiated an administrative review, 24 companies submitted separate-rate certifications, 10 companies submitted separate-rate applications, and three companies stated that they did not export subject merchandise to the United States during the POR.

(“Order”).

² See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review, 76 FR 5559 (February 1, 2011).

³ The Domestic Producers are the Ad Hoc Shrimp Trade Action Committee members: Nancy Edens; Papa Rod, Inc.; Carolina Seafoods; Bosarge Boats, Inc.; Knight’s Seafood Inc.; Big Grapes, Inc.; Versaggi Shrimp Co.; and Craig Wallis.

⁴ See Initiation of Antidumping Duty Administrative Reviews, Requests for Revocation in Part, and Deferral of Administrative Review, 76 FR 17825 (March 31, 2011).

⁵ See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Extension of Preliminary Results of Antidumping Duty Administrative Review, 76 FR 65178 (October 20, 2011).

⁶ See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Extension of Preliminary Results of Antidumping Duty Administrative Review, 77 FR 2958 (January 20, 2012).

Respondent Selection

Section 777A(c)(1) of the Tariff Act of 1930, as amended (“the Act”), directs the Department to calculate individual dumping margins for each known exporter or producer of the subject merchandise.⁷ However, section 777A(c)(2) of the Act gives the Department the discretion to limit its examination to a reasonable number of exporters or producers if it is not practicable to examine all exporters or producers involved in an administrative review.

On April 19, 2011, the Department released CBP data for entries of subject merchandise during the POR under administrative protective order (“APO”) to all interested parties having an APO as of the date of this release, and invited comments regarding the CBP data and respondent selection. On April 29, 2011, the Department received comments from the ASPA, the Domestic Producers, and certain Vietnamese respondents regarding respondent selection for this review. No other interested parties submitted comments for respondent selection and no interested parties rebutted these respondent selection comments.

On June 17, 2011, the Department issued the respondent selection memorandum, in which it explained that, because of the large numbers of exporters or producers involved in the review, it would not be practicable to individually examine all companies. Rather, the Department determined that it could only reasonably examine two exporters in this review. Pursuant to section 777A(c)(2)(B) of the Act, the Department selected Minh Phu Seafood Corporation (and its affiliates Minh Qui Seafood Co., Ltd., and Minh Phat Seafood Co., Ltd.) (collectively “the Minh Phu Group”), and Nha Trang Seaproduct Company (“Nha Trang Seafoods”).⁸ The Department issued the non-market economy (“NME”) antidumping questionnaire to the Minh Phu Group and

⁷ See also 19 CFR 351.204(c) regarding respondent selection, in general.

⁸ See Memorandum to James Doyle, Director, AD/CVD Operations, Office 9, from Toni Dach, International Trade Compliance Analyst, Office 9; 6th Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Selection of Respondents for Individual Review, dated June 17, 2011.

Nha Trang Seafoods on June 20, 2011. Responses from both companies were received in July and August, 2011. The Department issued supplemental questionnaires in November, 2011 and responses were received in December, 2011.

Period of Review

The POR is February 1, 2010, through January 31, 2011.

Scope of the Order

The scope of the order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,⁹ deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of the order, regardless of definitions in the Harmonized Tariff Schedule of the United States (“HTSUS”), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus*

⁹ “Tails” in this context means the tail fan, which includes the telson and the uropods.

stylirostris), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of the order. In addition, food preparations, which are not “prepared meals,” that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of the order.

Excluded from the scope are: 1) breaded shrimp and prawns (HTS subheading 1605.20.10.20); 2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; 3) fresh shrimp and prawns whether shell-on or peeled (HTS subheadings 0306.23.00.20 and 0306.23.00.40); 4) shrimp and prawns in prepared meals (HTS subheading 1605.20.05.10); 5) dried shrimp and prawns; 6) canned warmwater shrimp and prawns (HTS subheading 1605.20.10.40); 7) certain dusted shrimp;¹⁰ and 8) certain battered shrimp. Dusted shrimp is a shrimp-based product: 1) that is produced from fresh (or thawed-from-frozen) and peeled shrimp; 2) to which a “dusting” layer of rice or wheat flour of at least 95 percent purity has been applied; 3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; 4) with the non-shrimp content of the end product constituting between four and 10 percent of the product’s total weight after being dusted, but prior to being frozen; and 5) that is subjected to IQF freezing immediately after application of the dusting layer. Battered shrimp is a shrimp-based product that, when dusted in

¹⁰ On April 26, 2011, the Department amended the antidumping duty order to include dusted shrimp, pursuant to the U.S. Court of International Trade (“CIT”) decision in Ad Hoc Shrimp Trade Action Committee v. United States, 703 F. Supp. 2d 1330 (CIT 2010) and the U.S. International Trade Commission (“ITC”) determination, which found the domestic like product to include dusted shrimp. Because the amendment of the antidumping duty order occurred after this POR, dusted shrimp continue to be excluded in this review. See Certain Frozen Warmwater Shrimp From Brazil, India, the People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Amended Antidumping Duty Orders in Accordance with Final Court Decision, 76 FR 23227 (April 26, 2011); see also, Ad Hoc Shrimp Trade Action Committee v. United States, 703 F. Supp. 2d 1330 (CIT 2010) and Frozen Warmwater Shrimp from Brazil, China, India, Thailand, and Vietnam (Investigation Nos. 731-TA-1063, 1064, 1066-1068 (Review)), USITC Publication 4221, March 2011.

accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by the order are currently classified under the following HTSUS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10 and 1605.20.10.30. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of the order is dispositive.

Preliminary Partial Rescission of Administrative Review

Between May 15 and May 31, 2011, Quoc Viet, Nam Hai and Vinh Loi filed no shipment certifications indicating that they did not export subject merchandise to the United States during the POR. In order to examine these claims, we sent an inquiry to CBP requesting that any CBP office that had any information contrary to the no shipments claims, to alert the Department. We have received no such response from CBP.

Therefore, pursuant to 19 CFR 351.213(d)(3), we preliminarily determine that the above-referenced companies made no shipments of subject merchandise during the POR, and we are preliminarily rescinding the review with respect to them.¹¹

Additionally, we note that Thong Thuan Company Limited (“Thong Thuan”) is currently under review in the 2010-2011 new shipper review of certain frozen warmwater shrimp from Vietnam.¹² All entries made by Thong Thuan during the POR are under review in that segment.¹³

¹¹ See, e.g., Fourth Administrative Review of Certain Frozen Warmwater Shrimp From the People’s Republic of China: Preliminary Results, Preliminary Partial Rescission of Antidumping Duty Administrative Review and Intent Not To Revoke, In Part, 75 FR 11855, 11856-57 (March 12, 2010) (unchanged in final results).

¹² On June 13, 2011, the Department held consultations with counsel for Thong Thuan, in which they indicated that Thong Thuan wished to pursue the New Shipper Review, despite Thong Thuan’s request for an Administrative Review.

Therefore, the Department is preliminarily rescinding this administrative review with respect to Thong Thuan, as it has no additional entries to be reviewed in this segment.

Withdrawal of Request for Administrative Review

On May 20, 2011, the Domestic Producers withdrew their request for review of Bim Seafood Joint Stock Company (“Bim Seafood”). Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request within 90 days of the date of publication of the notice of initiation of the requested review. Therefore, as the withdrawal of the request for review of Bim Seafood was timely, we are preliminarily rescinding this review with respect to Bim Seafood.

Collapsing

As indicated above, the Department selected the Minh Phu Group as one of the mandatory respondents in this review. In responding to the Department’s antidumping questionnaire, the Minh Phu Group requested that the Department collapse an affiliated producer, Minh Phu Hau Giang Seafood Co., Ltd. (“Hau Giang”), with the Minh Phu Group. The Minh Phu Group based its request to collapse Hau Giang with itself primarily on the fact that the Minh Phu Group is a significant shareholder in Hau Giang and Hau Giang is controlled by the Minh Phu Group through shared management.

Pursuant to 19 CFR 351.401(f), the Department will collapse producers and treat them as a single entity where: (1) those producers are affiliated, (2) the producers have production facilities for producing similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and (3) there is a significant potential for manipulation of price or production.

¹³ See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty New Shipper Review, 77 FR 1053 (January 9, 2012).

To the extent that this provision does not conflict with the Department's application of separate rates and enforcement of the non-market economy ("NME") provision, section 773(c) of the Act, the Department will collapse two or more affiliated entities in a case involving an NME country if the facts of the case warrant such treatment. Furthermore, we note the factors listed in 19 CFR 351.401(f)(2) are not exhaustive, and in the context of an NME investigation or administrative review, other factors unique to the relationship of business entities within the NME country may lead the Department to determine that collapsing is either warranted or unwarranted, depending on the facts of the case.¹⁴

In summary, if there is evidence of significant potential for manipulation between or among affiliates which produce and/or export similar or identical merchandise, whether or not all such merchandise is exported to the United States, the Department may find such evidence sufficient to apply the collapsing criteria in an NME context in order to determine whether all or some of those affiliates should be treated as one entity.¹⁵

The decision of whether to collapse two or more affiliated companies is specific to the facts presented in the proceeding and is based on several considerations, including the structure of the collapsed entity, the level of control between and among affiliates, and the level of participation by each affiliate in the proceeding. Given the unique relationships which arise in NMEs between individual companies and the government, the same separate rate will be assigned to each individual company that is part of the collapsed entity only if the facts, taken as a whole,

¹⁴ See Hontex Enterprises, Inc. v. United States, 248 F. Supp. 2d 1323, 1342 (CIT 2003) (noting that the application of collapsing in the NME context may differ from the standard factors listed in the regulation).

¹⁵ See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China, 66 FR 22183 (May 3, 2001); Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China, 66 FR 49632 (September 28, 2001); and Anshan Iron & Steel Co., Ltd. v. United States, 27 C.I.T. 1234, 1246-47 (CIT 2003).

support such a finding.¹⁶

Based on the reasons explained in the Collapsing Memo, and pursuant to 19 CFR 351.401(f), we have preliminarily collapsed Hau Giang and the Minh Phu Group.¹⁷ All subsequent references in this notice to the Minh Phu Group will be to the collapsed entity that includes the Minh Phu Group and Hau Giang.

Surrogate Country and Surrogate Value Data

On July 20, 2011, the Department sent interested parties a letter inviting comments on surrogate country selection and information regarding valuing factors of production (“FOPs”). On September 12, 2011, the ASPA, the Domestic Producers, and certain Vietnamese respondents filed comments on surrogate country selection, stating India, the Philippines, and Bangladesh may be appropriate surrogates if their data are publicly available, reliable and contemporaneous. On December 12, 2011, the Department received information to value FOPs from the ASPA, the Domestic Producers, and certain Vietnamese respondents. The ASPA provided certain surrogate values from sources in India, the Domestic Producers provided surrogate values from sources in the Philippines, and the Vietnamese respondents provided surrogate values from sources in Bangladesh and Indonesia.

Surrogate Country

When the Department investigates imports from an NME country and available information does not permit the Department to determine NV pursuant to section 773(a) of the Act, then, pursuant to sections 773(c)(1) and 773(c)(4) of the Act, the Department bases NV on an

¹⁶ See “Separate Rates” section below for further discussion.

¹⁷ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, through James Doyle, Director, Office 9, AD/CVD Operations, from Toni Dach, Senior International Trade Analyst, Office 9, AD/CVD Operations, Regarding Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Whether to Collapse Minh Phu Hau Giang Seafood Co., Ltd. and the Minh Phu Group, dated February 28, 2012 (“Collapsing Memo”).

NME producer's FOPs, to the extent possible, in one or more market-economy countries that (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. Regarding the "level of economic development," the Department relied on per capita gross national income ("GNI") data to measure economic comparability.¹⁸ Further, pursuant to 19 CFR 351.408(c)(2), the Department will normally value FOPs in a single country. The sources of the surrogate factor values are discussed under the "Normal Value" section below and in the Memorandum to the File through Scot Fullerton, Program Manager, Office 9 from Toni Dach, Senior International Trade Analyst, Office 9: Sixth Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Surrogate Values for the Preliminary Results, dated February 28, 2012 ("Surrogate Value Memorandum").

Pursuant to its practice, the Department received a list of potential surrogate countries from Import Administration's Office of Policy ("OP").¹⁹ The OP determined that Bangladesh, Ghana, India, Indonesia, Nicaragua, and the Philippines were at a comparable level of economic development to Vietnam.²⁰ The Department considers the six countries identified by the OP in its Surrogate Country List as "equally comparable in terms of economic development."²¹ Thus, we find Bangladesh, Ghana, India, Indonesia, Nicaragua, and the Philippines are all at an economic

¹⁸ Although 19 CFR 351.408(b) instructs the Department to rely on gross domestic product ("GDP") data in such comparisons, it is Departmental practice to use "per capita GNI, rather than per capita GDP, because while the two measures are very similar, per capita GNI is reported across almost all countries by an authoritative source (the World Bank), and because the Department finds that the per capita GNI represents the single best measure of a country's level of total income and thus level of economic development." See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback, and Request for Comments, 71 FR 61716 (October 19, 2006).

¹⁹ See Memorandum from Carole Showers, Director, Office of Policy, to Scot T. Fullerton, Program Manager, AD/CVD Operations, Office 9: Request for a List of Surrogate Countries for an Antidumping Duty Administrative Review of the Antidumping Duty Order on Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam, dated July 20, 2011 ("Surrogate Country List").

²⁰ Id.

²¹ Id.

level of development equally comparable to that of Vietnam. We note that the Surrogate Country List is a non-exhaustive list of economically comparable countries. We also note that the record does not contain publicly available SV factor information for Ghana, Nicaragua, or Indonesia. Parties submitted information demonstrating that Bangladesh, India, and the Philippines are significant producers of subject merchandise.²² Thus, we find that Bangladesh, India, and the Philippines are economically comparable to Vietnam and significant producers of the subject merchandise.

Once we have identified the countries that are economically comparable to Vietnam and are significant producers of the subject merchandise, we select an appropriate surrogate country by determining whether the data for valuing FOPs are both available and reliable.

Regarding the Bangladeshi data, the record contains publicly available surrogate factor value information for most FOPs. With respect to the main raw material input, shrimp, the Vietnamese respondents provided data for Bangladesh from a study conducted by the Network of Aquaculture Centres in Asia-Pacific (“NACA”), an intergovernmental organization affiliated with the United Nation’s (“UN”) Food and Agricultural Organization (“FAO”).

With respect to India, the record contains publicly available surrogate value information for some FOPs. Although the ASPA noted in its December 12, 2011, surrogate value submission that it would place publicly available information from India to value shrimp on the record, no information from India to value shrimp has been placed on the record.

With regard to the Philippines, the record contains publicly available surrogate factor value information for all FOPs. Domestic Producers provided shrimp data for the Philippines published by the Philippines Fisheries Development Authority (“PFDA”) at Navotas City Fish Port.

²² See September 12, 2011, submissions from the ASPA, Domestic Producers, and Certain Vietnamese Respondents.

The Department's practice when selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, SVs which are product-specific, representative of a broad-market average, publicly available, contemporaneous with the POR and exclusive of taxes and duties.²³ As a general matter, the Department prefers to use publicly available data representing a broad-market average to value SVs.²⁴ The Department notes that the value of the main input, head-on, shell-on shrimp, is a critical FOP in the dumping calculation as it accounts for a significant percentage of NV. Moreover, the ability to value shrimp on a count-size basis is a significant consideration with respect to the data available on the record, as the subject merchandise and the raw shrimp input are both sold on a count-size specific basis. For these reasons, in prior administrative reviews, the Department rejected shrimp SVs with limited count sizes.²⁵

The Bangladeshi shrimp values within the NACA study are compiled by the UN's FAO from actual pricing records kept by Bangladeshi farmers, traders, depots, agents, and processors.²⁶ The Bangladeshi shrimp values within the NACA study are publicly available, represent a broad-market average, are product-specific, count-size-specific, contemporaneous and represent actual transaction prices. Unlike the Bangladeshi data within the NACA study, the Philippine shrimp data is limited and does not satisfy as many factors of the Department's data selection criteria. Specifically, we note that the PFDA data contains limited count-size specific data, omitting substantial portions of the range of sizes of shrimp sold by the respondents. Therefore, with respect to the data considerations, we find that the record contains shrimp values for

²³ See Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the Eleventh Administrative Review and New Shipper Reviews, 72 FR 34438 (June 22, 2007) and accompanying Issues and Decision Memorandum at Comment 2A.

²⁴ Id.

²⁵ See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 74 FR 47191 (September 15, 2009) and accompanying Issues and Decision Memorandum at Comment 6.

²⁶ See Surrogate Value Memorandum.

Bangladesh that better meet our selection criteria than the Philippine source. Moreover, there is no shrimp value information from India on the record of this review. Accordingly, as shrimp is the main factor of production in this case, we have selected Bangladesh as the primary surrogate country as the shrimp surrogate value for Bangladesh is the most specific to the input consumed.

In this regard, given the above-cited facts, we find that the information on the record shows that Bangladesh is an appropriate surrogate country because Bangladesh is at a similar level of economic development pursuant to section 773(c)(4) of the Act, is a significant producer of comparable merchandise, and has reliable, publicly available data for surrogate valuation purposes, particularly for the main factor of production, *i.e.*, shrimp.

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results in an antidumping administrative review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results.

Verification

Pursuant to 19 CFR 351.307(b)(iv), between January 16, and January 20, 2012, the Department conducted a verification of Nha Trang Seafoods' sales and FOPs.²⁷

Non-Market Economy Country Status

In every case conducted by the Department involving Vietnam, Vietnam has been treated as an NME country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority.²⁸ None of the parties to this proceeding have contested such treatment. Accordingly,

²⁷ See Memorandum to the File through Scot Fullerton, Program Manager, Office 9, from Toni Dach, Senior International Trade Analyst, and Seth Isenberg, International Trade Analyst, "Verification of the Sales and Factors of Production Response Nha Trang Seaproduct Group in the 2010-11 Administrative Review of Certain Warmwater Shrimp from the Socialist Republic of Vietnam", dated February 28, 2012.

²⁸ See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Results, Partial Rescission and Request for Revocation, in Part, of the Fourth Administrative Review, 75 FR 12206 (March 15, 2010)

we calculated the NV in accordance with section 773(c) of the Act, which applies to NME countries.

Separate Rates

In NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate.²⁹ However, a company in the NME applying for separate rate status may rebut that presumption by demonstrating an absence of both de jure and de facto government control over its export activities.³⁰

The Department analyzes each entity's export independence under a test first articulated in Sparklers and as further developed in Silicon Carbide.³¹ Importantly, if the Department determines that a company is wholly foreign-owned or located in a market economy ("ME") country, then the Department need not conduct a separate rate analysis to determine whether the company is independent from government control.³²

In addition to the two mandatory respondents, the Minh Phu Group and Nha Trang Seafoods, the Department received separate rate applications or certifications from the following thirty-one companies ("Separate-Rate Applicants"):

(unchanged in final results).

²⁹ See Separate Rates and Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries, 70 FR 17233, 17233 (April 5, 2005) ("Policy Bulletin 05.1"), also available at: <http://ia.ita.doc.gov/policy/index.html>; see also Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079, 53082 (September 8, 2006); and Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China, 71 FR 29303, 29307 (May 22, 2006).

³⁰ See Policy Bulletin 05.1.

³¹ See Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588, 20589 (May 6, 1991) ("Sparklers"); see also Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585, 22586-87 (May 2, 1994) ("Silicon Carbide").

³² See, e.g., Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China, 72 FR 52355, 52356 (September 13, 2007).

1. Amanda Foods (Vietnam) Limited
2. Bac Lieu Fisheries Joint Stock Company
3. C.P. Vietnam Livestock Corporation
4. Cafatex Fishery Joint Stock Corporation, aka Cafatex Corp.
5. Cadovimex Seafood Import-Export and Processing Joint Stock Company, aka
CADOVIMEX-VIETNAM
6. Ca Mau Seafood Joint Stock Company, aka Seaprimexco Vietnam
7. Camau Frozen Seafood Processing Import Export Corp.
8. Camranh Seafoods and Branch of Cam Ranh
9. Can Tho Import Export Fishery Limited Company, aka CAFISH
10. CATACO Sole Member Limited Liability Company, aka CATACO
11. Coastal Fisheries Development Corporation, aka COFIDEX
12. Cuulong Seaproducts Company, aka Cuulong Seapro
13. Danang Seaproducts Import Export Corporation, aka Seaprodex Danang and its branch Tho
Quang Seafood Processing and Export Company
14. Viet I-Mei Frozen Foods Co., Ltd.
15. Gallant Ocean (Vietnam) Co. Ltd.
16. Investment Commerce Fisheries Corporation, aka INCOMFISH
17. Kim Anh Company, Limited
18. Minh Hai Export Frozen Seafood Processing Joint Stock Company, aka Minh Hai Jostoco
19. Minh Hai Joint-Stock Seafoods Processing Company, aka Seaprodex Minh Hai
20. Ngoc Sinh Private Enterprise and its branch, Ngoc Sinh Seafoods Processing and Trading

Enterprise, aka Ngoc Sinh Seafoods

21. Ngoc Tri Seafood Joint Stock Company

22. Nhat Dhuc Co., Ltd.

23. Nha Trang Fisheries Joint Stock Company, aka Nha Trang Fisco

24. Phu Cuong Jostoco Seafood Corporation

25. Phuong Nam Foodstuff Corp., aka Phuong Nam Co., Ltd.

26. Sao Ta Foods Joint Stock Company, aka FIMEX VN

27. Soc Trang Seafood Joint Stock Company, aka STAPIMEX

28. Thuan Phuoc Seafoods and Trading Corporation

29. UTXI Aquatic Products Corporation, aka UTXICO

30. Vietnam Clean Seafood Corporation, aka VINA Cleanfood

31. Viet Hai Seafood Co., Ltd., a/k/a Vietnam Fish One Co., Ltd.

The status of the Separate-Rate Applicants is discussed below.

Thirty companies did not submit either a separate-rate application or certification.³³

Therefore, because these companies did not demonstrate their eligibility for separate rate status, they remain preliminarily included as part of the Vietnam-wide entity.

a. Absence of De Jure Control

The Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.³⁴ The evidence provided by the Minh Phu

³³ See Appendix 1.

³⁴ See Sparklers, 56 FR at 20589.

Group, Nha Trang Seafoods, and the Separate-Rate Applicants supports a preliminary finding of de jure absence of government control based on the following: (1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) there are formal measures by the government decentralizing control of companies. See, e.g., the Minh Phu Group's AQR at Exhibit 1, Nha Trang Seafoods Group's AQR at Exhibit A-1.

b. Absence of De Facto Control

Typically the Department considers four factors in evaluating whether each respondent is subject to de facto government control of its export functions: (1) whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.³⁵ The Department has determined that an analysis of de facto control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates. The evidence provided by the Minh Phu Group, Nha Trang Seafoods, and the Separate-Rate Applicants supports a preliminary finding of de facto absence of government control based on the following: (1) the companies set their own export prices independent of the government and without the approval of a government authority; (2) the companies have authority to negotiate and sign contracts and other agreements; (3) the companies have autonomy from the government in making decisions regarding the selection of management;

³⁵ See Silicon Carbide, 59 FR at 22586-87; see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China, 60 FR 22544, 22545 (May 8, 1995).

and (4) there is no restriction on any of the companies' use of export revenue. See, e.g., the Minh Phu Group's AQR at 3-26 and Exhibit A-1, Nha Trang Seafoods Group's AQR at 3-16 and Exhibit A-1. Therefore, the Department preliminarily finds that the Minh Phu Group, Nha Trang Seafoods, and the Separate-Rate Applicants have established that they qualify for a separate rate under the criteria established by Silicon Carbide and Sparklers.

Separate Rate Calculation

In the "Respondent Selection" section above, we stated that the Department employed a limited examination methodology, as it did not have the resources to examine all companies for which a review request was made, and selected two exporters as mandatory respondents in this review. The Minh Phu Group and Nha Trang Seafoods participated in the review as mandatory respondents. Thirty-three additional companies (listed in the "Separate Rates" section above) submitted timely information as requested by the Department and remained subject to review as separate rate respondents.

We note that the statute and the Department's regulations do not directly address the establishment of a rate to be applied to individual companies not selected for examination where the Department limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. The Department's practice in cases involving limited selection based on exporters accounting for the largest volumes of trade has been to look for guidance in section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation. Consequently, the Department generally weight-averages the rates calculated for the mandatory respondents, excluding zero and de minimis rates and rates based entirely on facts available ("FA"), and applies that resulting weighted-average margin to non-selected cooperative

separate-rate respondents.³⁶

However, the Department has, for these preliminary results, calculated a zero or de minimis dumping margin for the two mandatory respondents, the Minh Phu Group and Nha Trang Seafoods. In this circumstance, we again look to section 735(c)(5) of the Act for guidance. Section 735(c)(5)(A) of the Act instructs that we are not to calculate an all-others rate using any zero or de minimis margins or any margins based entirely on FA. Section 735(c)(5)(B) of the Act also provides that, where all margins are zero rates, de minimis rates, or rates based entirely on FA, we may use “any reasonable method” for assigning the rate to non-selected respondents. Therefore, because all rates in this proceeding are de minimis, we must look to other reasonable means to assign separate rate margins to non-reviewed companies eligible for a separate rate in this review. Given that the Department has calculated positive rates for mandatory respondents in the immediately preceding two administrative reviews,³⁷ distinguishing this review from the second and third reviews,³⁸ we find that a reasonable method is to assign to non-reviewed companies in this review the most recent calculated rate from a prior completed segment of the proceeding that is not zero or *de minimis*, and not based entirely on facts available (or average of such rates), or, if any non-selected company has its own calculated (non-adverse facts available) rate that is contemporaneous with or more recent than this rate, then the company will receive that rate. Pursuant to this method, we are assigning the rate of 1.03 percent, the most recent positive rate (from the amended final results of the fifth administrative review) calculated for cooperative

³⁶ See, e.g., Wooden Bedroom Furniture From the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Results of New Shipper Review and Partial Rescission of Administrative Review, 73 FR 8273 (February 13, 2008) (unchanged in final results).

³⁷ See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Amended Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 76 FR 64307 (October 18, 2011) (“Fifth Review Amended Final”) and Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Amended Final Results of Antidumping Duty Administrative Review, 75 FR 61122 (October 4, 2010).

³⁸ See Amanda Foods (Vietnam) Ltd v. United States, 774 F.Supp.2d 1286 (CIT 2011); Amanda Foods (Vietnam) Ltd v. United States, 807 F.Supp.2d 1332 (CIT 2011).

separate rate respondents, to those separate rate respondents in the instant review.³⁹ However, for Camimex, who received a calculated rate in the fifth administrative review, we are assigning that calculated rate as the company's separate rate in this review. Therefore, for Camimex, we are assigning its most recently calculated rate (0.80 percent) as its separate rate in the instant review because this rate is contemporaneous with the separate rate calculated in the fifth administrative review and is based on the company's own data. We invite parties to provide comments on this methodology in their case briefs.

Vietnam-Wide Entity

Upon initiation of the administrative review, we provided the opportunity for all companies upon which the review was initiated to complete either the separate-rates application or certification. The separate-rate certification and separate-rate applications were available at: <http://ia.ita.doc.gov/nme/nme-sep-rate.html>.

We have preliminarily determined that 30 companies did not demonstrate their eligibility for a separate rate and are properly considered part of the Vietnam-wide entity. In NME proceedings, “rates” may consist of a single dumping margin applicable to all exporters and producers.”⁴⁰ As explained above in the “Separate Rates” section, all companies within Vietnam are considered to be subject to government control unless they are able to demonstrate an absence of government control with respect to their export activities. Such companies are thus assigned a single antidumping duty rate distinct from the separate rate(s) determined for companies that are found to be independent of government control with respect to their export activities. We consider the influence that the government has been found to have over the economy to warrant determining a rate for the entity that is distinct from the rates found for companies that have

³⁹ See Fifth Review Amended Final.

⁴⁰ See 19 CFR 351.107(d).

provided sufficient evidence to establish that they operate freely with respect to their export activities.⁴¹ In this regard, we note that no party has submitted evidence of the proceeding to demonstrate that such government influence is no longer present or that our treatment of the NME entity is otherwise incorrect. Therefore, we are assigning the entity a rate of 25.76%, the only rate ever determined for the Vietnam-wide entity in this proceeding.

Date of Sale

In accordance with 19 CFR 351.401(i) and the Department's long-standing practice of determining the date of sale,⁴² the Department preliminarily determines that the invoice date is the most appropriate date to use as the Minh Phu Group and Nha Trang Seafoods date of sale. The Minh Phu Group and Nha Trang Seafoods reported the invoice date as the date of sale because they claim that, for their U.S. sales of subject merchandise made during the POR, the material terms of sale were established based on the invoice date.

Fair Value Comparisons

To determine whether sales of shrimp to the United States by the Minh Phu Group and Nha Trang Seafoods were made at less than NV, the Department compared either export price ("EP") or constructed export price ("CEP") to NV, as described in the "U.S. Price" and "Normal Value" sections below.

U.S. Price

Export Price

In accordance with section 772(a) of the Act, the Department calculated EP for sales to the United States for Nha Trang Seafoods and a portion of sales to the United States for the Minh Phu

⁴¹ See Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 68 FR 37116 (June 23, 2003).

⁴² See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10.

Group because the first sale to an unaffiliated party was made before the date of importation and the use of CEP was not otherwise warranted. The Department calculated EP based on the sales price to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, as appropriate, the Department deducted from the sales price certain foreign inland freight, brokerage and handling (“B&H”), and international movement costs. Because the inland freight and B&H services were either provided by a NME vendor or paid for using a NME currency, the Department based the deduction of these charges on surrogate values.⁴³ For international freight provided by a ME provider and paid in U.S. dollars, the Department used the actual cost per kilogram (“kg”) of the freight.

Constructed Export Price

For some of the Minh Phu Group’s sales, the Department based U.S. price on CEP in accordance with section 772(b) of the Act, because sales were made on behalf of the Vietnam-based company by a U.S. affiliate to unaffiliated purchasers in the United States. For these sales, the Department based CEP on prices to the first unaffiliated purchaser in the United States. Where appropriate, the Department made deductions from the starting price (gross unit price) for foreign movement expenses, international movement expenses, U.S. movement expenses, and appropriate selling adjustments, in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act, the Department also deducted those selling expenses associated with economic activities occurring in the United States. The Department deducted, where appropriate, commissions, inventory carrying costs, interest revenue, credit expenses, warranty expenses, and indirect selling expenses. Where foreign movement expenses, international movement expenses, or U.S. movement expenses were provided by NME

⁴³ See Surrogate Value Memorandum for details regarding the SVs for movement expenses.

service providers or paid for in an NME currency, the Department valued these services using SVs (see “Factor Valuations” section below for further discussion). For those expenses that were provided by an ME provider and paid for in an ME currency, the Department used the reported expense. Due to the proprietary nature of certain adjustments to U.S. price, for a detailed description of all adjustments made to U.S. price for each company, see the company-specific analysis memoranda, dated concurrently with these preliminary results.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. Further, pursuant to section 773(c)(1) of the Act, the valuation of an NME respondent’s FOPs shall be based on the best available information regarding the value of such factors in an ME country or countries considered to be appropriate by the Department. The Department bases NV on the FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department’s normal methodologies.

The Department used import statistics into Bangladesh to value the raw material and packing material inputs that the Minh Phu Group and Nha Trang Seafoods used to produce the subject merchandise during the POR, except where listed below.

With respect to the SVs based on Bangladeshi import statistics, in according with the Omnibus Trade and Competitiveness Act of 1988 (“OTCA”) and long-standing agency practice, the Department has disregarded prices that the Department has reason to believe or suspect may

be subsidized.⁴⁴ The Department has previously found that it is appropriate to disregard such prices from Indonesia, South Korea, and Thailand because we have determined that these countries maintain broadly available, non-industry specific, export subsidies.⁴⁵ Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, the Department finds that it has reason to believe or suspect that all exporters from Indonesia, South Korea, and Thailand may have benefitted from these subsidies and that we should therefore disregard any data from these countries contained in the Bangladeshi import statistics used to calculate SVs. The Department similarly disregarded prices from NME countries. Imports that were labeled as originating from an “unspecified” country were excluded from the average value, since the Department could not be certain that they were not from either an NME country or a country with generally available export subsidies.⁴⁶ Finally, the Department has excluded some imports identified as originating from Bangladesh.⁴⁷ For further discussion regarding all SV calculations using Bangladeshi Import Statistics, see Surrogate Value Memorandum.

Factor Valuations

In accordance with section 773(c)(1) of the Act, for subject merchandise produced by the Minh Phu Group and Nha Trang Seafoods, the Department calculated NV based on the FOPs

⁴⁴ See Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) at 590.

⁴⁵ See, e.g., Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order, 75 FR 13257 (March 19, 2010) and accompanying Issues and Decision Memorandum at 4-5; Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review, 70 FR 45692 (August 8, 2005) and accompanying Issues and Decision Memorandum at 4; See Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 74 FR 2512 (January 15, 2009) and accompanying Issues and Decision Memorandum at 17, 19-20; See Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Thailand, 66 FR 50410 (October 3, 2001) and accompanying Issues and Decision Memorandum at 23.

⁴⁶ See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value, 73 FR 24552, 24559 (May 5, 2008) (unchanged in final determination).

⁴⁷ See Factor Valuations section, below.

reported by the Minh Phu Group and Nha Trang Seafoods for the POR. The Department used data from the Bangladesh import statistics and other publicly available Bangladeshi sources in order to calculate SVs for the Minh Phu Group and Nha Trang Seafoods' FOPs (direct materials, energy, and packing materials) and certain movement expenses. To calculate NV, the Department multiplied the reported per-unit factor quantities by publicly available Bangladeshi SVs (except as noted below). Because the statute is silent concerning what constitutes the "best available information" for a particular SV, the courts have recognized that on this topic the Department enjoys "broad discretion to determine the best available information for an antidumping review."⁴⁸ The Department's practice when selecting the best available information for valuing FOPs is to select, to the extent practicable, SVs which are product-specific, representative of a broad market average, publicly available, contemporaneous with the POR, and exclusive of taxes and duties.⁴⁹

Domestic Producers provided shrimp data for the Philippines published by the PFDA, which, although publicly available, does not encompass the full range of count sizes sold by respondents. Conversely, the shrimp values within the NACA study, which were submitted by certain Vietnamese respondents, are compiled from actual pricing records kept by Bangladeshi farmers, traders, depots, agents, and processors, are count-specific, and publicly available. Therefore, to value the main input, head-on, shell-on shrimp, the Department used data contained in the NACA study.⁵⁰

The Department used United Nations ComTrade Statistics, provided by the UN Department of Economic and Social Affairs' Statistics Division, as its primary source of

⁴⁸ See Ad Hoc Shrimp Trade Action Comm. v. United States, 618 F.3d 1316, 1322(Fed. Cir. 2010).

⁴⁹ See, e.g., Electrolytic Manganese Dioxide From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 48195 (August 18, 2008) and accompanying Issues and Decision Memorandum at Comment 2.

⁵⁰ For a detailed explanation of the Department's valuation of shrimp, see Surrogate Value Memorandum at 3.

Bangladeshi SV data.⁵¹ The data represents cumulative values for the calendar year 2007, for inputs classified by the Harmonized Commodity Description and Coding System number. For each input value, we used the average value per unit for that input imported into Bangladesh from all countries that the Department has not previously determined to be NME countries. Import statistics from countries that the Department has determined to be countries which subsidized exports (i.e., Indonesia, South Korea, Thailand, and India) and imports from unspecified countries also were excluded in the calculation of the average value.⁵² Lastly, the Department has also excluded imports from Bangladesh into Bangladesh because there is no evidence on the record regarding what these data represent (e.g., re-importations, another category of unspecified imports, or the result of an error in reporting). Thus, these data do not represent the best available information upon which to rely for valuation purposes.⁵³

In this case, the Department adjusted the SVs as necessary to ensure a fair calculation of the production costs.⁵⁴ First, the Department made adjustments to the SVs for exchange rates and taxes, and converted all applicable items to measurement on a per kg basis. Second, the Department adjusted input prices by including freight costs to render them delivered prices. Specifically, to accord with the decision of the Federal Circuit in Sigma Corp. v. United States, 117 F.3d 1401, 1408 (Fed. Cir. 1997), the Department added to the Bangladeshi import SVs a surrogate freight cost using the shorter of the reported distance between (1) the domestic supplier and the factory or (2) the nearest seaport and the factory. Where we did not use Bangladeshi

⁵¹ This can be accessed online at: <http://www.unstats.un.org/unsd/comtrade/>.

⁵² See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China, 69 FR 20594 (April 16, 2004).

⁵³ See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 75 FR 47771 (August 9, 2010) and accompanying Issues and Decision Memorandum at Comment 6.

⁵⁴ See Grobtest & I-Mei Industrial (Vietnam) Co., Ltd., et al. v. United States, Slip Op. 2012-9 (January 18, 2012) at 20.

Import Statistics, we calculated freight based on the reported distance from the supplier to the factory. For a detailed description of all SVs used for the Minh Phu Group and Nha Trang Seafoods, see Surrogate Value Memorandum.

It is the Department's practice to calculate price index adjusters to inflate or deflate, as appropriate, SVs that are not contemporaneous with the POR using the wholesale price index ("WPI") for the subject country.⁵⁵ However, in this case, a WPI was not available for Bangladesh. Therefore, where publicly available information contemporaneous with the POR with which to value factors could not be obtained, SVs were adjusted using the Consumer Price Index ("CPI") rate for Bangladesh, or the WPI for India or Indonesia (for certain SVs where Bangladeshi data could not be obtained), as published in the International Financial Statistics of the International Monetary Fund. We made currency conversions, where necessary, pursuant to 19 CFR 351.415, to U.S. dollars using the daily exchange rate corresponding to the reported date of each sale. We relied on the daily exchange rates posted on the Import Administration website (<http://www.trade.gov/ia/>).⁵⁶

The Department used UN ComTrade to value the raw material and packing material inputs that the Minh Phu Group and Nha Trang Seafoods used to produce the merchandise under review during the POR, except where listed below. For a detailed description of all SVs for respondents, see Surrogate Value Memorandum.

We valued electricity using data from the Bangladesh Ministry of Power, Energy, & Mineral Resources. This information was published on their Power Division's website.⁵⁷

We valued water using 2007 data from the Asian Development Bank. We inflated the

⁵⁵ See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Hand Trucks and Certain Parts Thereof From the People's Republic of China, 69 FR 29509 (May 24, 2004).

⁵⁶ See Surrogate Value Memorandum.

⁵⁷ See Surrogate Value Memorandum at 3.

value using the POR average CPI rate.⁵⁸

We valued diesel using data published by the World Bank in “Bangladesh: Transport at a Glance,” published in June 2006. We inflated the value using the POR average CPI rate.⁵⁹

To value truck freight and river freight, we used data published in 2008 Statistical Yearbook of Bangladesh published by the Bangladesh Bureau of Statistics. We inflated the value using the POR average CPI rate.⁶⁰

To value marine insurance, the Department used rates from RJG Consultants. These rates are for sea freight from the Far East Region.⁶¹

We valued warehouse/cold storage rates published in an article on tropical-seeds.com in July 1997. We inflated the value using the POR average CPI rate.⁶²

We valued containerization using information previously available on the Import Administration website. We inflated the value using the POR average WPI rate.⁶³

The Department valued terminal lift charges using data from the websites <http://www.oocl.com/bangladesh/eng/localinformation/localsurcharges/?site=bangladesh&lang=eng> and http://www.srinternational.com/standard_containers.htm. We inflated the value using the POR average WPI rate.⁶⁴

We valued the by-product using shell scrap values from the Memorandum to Barbara E. Tillman, Director, Office of AD/CVD Enforcement VII, through Maureen Flannery, Program Manager, Office of AD/CVD Enforcement VII, from Christian Hughes and Adina Teodorescu, Case Analysts, subject: Surrogate Valuation of Shell Scrap: Freshwater Crawfish Tail Meat from

⁵⁸ Id. at 4.

⁵⁹ Id. at 5.

⁶⁰ Id. at 6.

⁶¹ Id. at 4.

⁶² Id. at 3.

⁶³ Id. at 4.

⁶⁴ Id. at 5.

the People's Republic of China (PRC), Administrative Review 9/1/00-8/31/01 and New Shipper Reviews 9/1/00-8/31/01 and 9/1/00-10/15/01. We inflated the value using the POR average WPI rate.⁶⁵

To value factory overhead, selling, general, & administrative expenses, and profit, we used the simple average of the 2009-2010 financial statement of Apex Foods Limited and the 2009-2010 financial statement of Gemini Seafood Limited, both of which are Bangladeshi producers of identical merchandise.⁶⁶

As previously stated, the Department values FOPs in NME cases using the best available information for such factors in a ME country or countries considered appropriate by the administering authority. In so doing, the Department utilizes, to the extent possible, the prices or costs of factors of production in one or more ME countries that are (1) at a comparable level of economic development and (2) significant producers of comparable merchandise.⁶⁷

Previously, to value the respondent's cost of labor, the Department used regression-based wages that captured the worldwide relationship between per capita Gross National Income ("GNI") and hourly manufacturing wages, pursuant to 19 CFR 351.408(c)(3). However, on May 14, 2010, the Federal Circuit in Dorbest Ltd. v. United States, 604 F.3d 1363, 1372-73 (Fed. Cir. 2010) ("Dorbest"), invalidated 19 CFR 351.408(c)(3). As a consequence of the Federal Circuit's ruling in Dorbest, the Department no longer relies on the regression-based wage rate methodology described in its regulations.

In this review, the Department has selected Bangladesh as the surrogate country for the final results. The record contains a labor wage rate for shrimp processing in Bangladesh, published by the Bangladesh Bureau of Statistics. When selecting possible surrogate values for

⁶⁵ Id. at 7.

⁶⁶ See Surrogate Value Memorandum, at Exhibit 2.

⁶⁷ See section 773(c)(4) of the Act.

use in an NME proceeding, the Department's preference is to use surrogate values that are publicly available, broad market averages, contemporaneous with the POR, specific to the input in question, and exclusive of taxes.⁶⁸ Pursuant to section 773(c)(1) of the Act, it is also the Department's practice to use the best available information to derive surrogate values. The Department considers several factors, including quality, specificity and contemporaneity, to determine the best available information in accordance with the Act. The Department finds this labor wage rate to be the best available information on the record. This data is publicly available, represents a broad market average, specific to the shrimp processing industry, contemporaneous to the POR, and collected from an official Bangladeshi government source in the surrogate country that the Department has selected. Therefore, we note that the BBS data is consistent with the Department's statement of policy regarding the calculation of surrogate value for labor. For further information on the calculation of the labor rate, see Surrogate Value Memorandum at 4.

To value brokerage and handling, the Department used a price list of export procedures necessary to export a standardized cargo of goods in India. The price list is publicly available and compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in India as published in Doing Business 2011: India (published by the World Bank).⁶⁹

Currency Conversion

The Department made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified

⁶⁸ See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Second Administrative Review, 72 FR 13242 (March 21, 2007) and accompanying Issues and Decision Memorandum at Comment 8B.

⁶⁹ See Surrogate Value Memorandum at XX.

by the Federal Reserve Bank.

Preliminary Results of Review

The Department preliminarily determines that the following weighted-average dumping margins exist:

Exporter	Simple Average Margin
Minh Phu Group: Minh Phat Seafood Co., Ltd., aka Minh Phat Seafood aka Minh Phu Seafood Export Import Corporation (and affiliates Minh Qui Seafood Co., Ltd. and Minh Phat Seafood Co., Ltd.) aka Minh Phu Seafood Corp. aka Minh Phu Seafood Corporation aka Minh Qui Seafood aka Minh Qui Seafood Co., Ltd. Minh Phu Seafood Pte aka Minh Phat aka Minh Qui Minh Phu Hau Giang Seafood Co., Ltd.	0.09% <u>de minimis</u>
Nha Trang Seafoods Group: Nha Trang Seaproduct Company (“Nha Trang Seafoods”) aka Nha Trang Seafoods aka Nha Trang Seaproduct Company Nha Trang Seafoods aka NT Seafoods Corporation (“NT Seafoods”) Nha Trang Seafoods – F.89 Joint Stock Company (“Nha Trang Seafoods – F.89”) aka NTSF Seafoods Joint Stock Company (“NTSF Seafoods”)	0.00%
Amanda Foods (Vietnam) Limited (“Amanda Foods”)	1.03%

Bac Lieu Fisheries Company Limited, aka Bac Lieu Fisheries Company Limited (“Bac Lieu”) aka Bac Lieu Fisheries Joint Stock Company aka Bac Lieu Fisheries Limited Company aka Bac Lieu Fisheries Company Limited aka Bac Lieu Fis	1.03%
Camau Frozen Seafood Processing Import Export Corporation (“CAMIMEX”) aka Camimex aka Camau Seafood Factory No. 4 aka Camau Seafood Factory No. 5 aka Camau Frozen Seafood Processing Import & Export aka Camau Frozen Seafood Processing Import Export Corp. (CAMIMEX-FAC 25) aka Frozen Factory No. 4 Camau Frozen Seafood Processing Import Export Corporation (“CAMIMEX”) aka Camimex aka Camau Seafood Factory No. 4 aka Camau Seafood Factory No. 5	0.80%
C.P. Vietnam Livestock Company Limited aka C.P. Vietnam Livestock Corporation (“C.P. Vietnam”) aka C.P. Vietnam Livestock Corporation	1.03%
Cadovimex Seafood Import-Export and Processing Joint Stock Company (“CADOVIMEX-VIETNAM”) aka Cadovimex-Vietnam aka Cai Doi Vam Seafood Import-Export Company (“Cadovimex”) aka Cai Doi Vam Seafood Import-Export Company (Cadovimex) aka Cai Doi Vam Seafood aka Cai Doi Vam Seafood Im-Ex Company (Cadovimex) aka Cai Doi Vam Seafood Processing Factory aka Caidoivam Seafood Company (Cadovimex) aka Caidoivam Seafood Im-Ex Co.	1.03%

Cafatex Fishery Joint Stock Corporation (“Cafatex Corp.”) aka Cafatex Fishery Joint Stock Corporation (“CAFATEX CORP.”) aka Cantho Animal Fisheries Product Processing Export Enterprise (Cafatex), aka Cafatex, aka Cafatex Vietnam, aka Xi Nghiep Che Bien Thuy Suc San Xuat Kau Cantho, aka Cas, aka Cas Branch, aka Cafatex Saigon, aka Cafatex Fishery Joint Stock Corporation, aka Cafatex Corporation, aka Taydo Seafood Enterprise aka Cafatex Corp. aka Cafatex Corporation	1.03%
Cam Ranh Seafoods Processing Enterprise Company (“Camranh Seafoods”) aka Camranh Seafoods	1.03%
Can Tho Agricultural and Animal Products Import Export Company (“CATACO”) aka Can Tho Agricultural Products aka CATACO aka Can Tho Agricultural and Animal Products Imex Company	1.03%
Can Tho Import Export Fishery Limited Company (“CAFISH”)	1.03%
Coastal Fishery Development aka Coastal Fisheries Development Corporation (“Cofidec”) aka Coastal Fisheries Development Corporation (Cofidec) aka COFIDEC aka Coastal Fisheries Development Corporation aka Coastal Fisheries Development Co. aka Coastal Fisheries Development Corp.	1.03%

Cuulong Seaproducts Company (“Cuu Long Seapro”) aka Cuu Long Seaproducts Limited (“Cuulong Seapro”) aka Cuulong Seapro aka Cuulong Seaproducts Company (“Cuulong Seapro”) aka Cuu Long Seaproducts Company (“Cuu Long Seapro”) aka Cuu Long Seaproducts Company aka Cuu Long Seapro aka Cuulong Seaproducts Company (“Cuu Long Seapro”) aka Cuu Long Seaproducts Limited (Cuulong Seapro) aka Cuulong Seapro aka Cuulong Seaproduct Company	1.03%
Danang Seaproducts Import Export Corporation (“Seaprodex Danang”) aka Danang Seaproducts Import Export Corporation aka Danang Seaproduct Import-Export Corporation aka Danang Seaproducts Import Export aka Tho Quang Seafood Processing & Export Company aka Seaprodex Danang aka Tho Quang Seafood Processing and Export Company aka Tho Quang aka Tho Quang Co.	1.03%
Gallant Ocean (Vietnam) Co., Ltd.	1.03%
Viet I-Mei Frozen Foods Co., Ltd.	1.03%
Investment Commerce Fisheries Corporation (“Incomfish”) aka Incomfish aka Investment Commerce Fisheries Corp., aka Incomfish Corp., aka Incomfish Corporation aka Investment Commerce Fisheries aka Investment Commerce Fisheries Corporation aka Incomfish Corporation	1.03%
Kim Anh Company Limited (“Kim Anh”)	1.03%

Minh Hai Export Frozen Seafood Processing Joint Stock Company aka Minh Hai Jostoco aka Minh Hai Export Frozen Seafood Processing Joint-Stock Company (“Minh Hai Jostoco”) aka Minh Hai Export Frozen Seafood Processing Joint Stock Company (“Minh Hai Jostoco”) aka Minh Hai Export Frozen Seafood Processing Joint-Stock Company aka Minh Hai Joint Stock Seafood Processing Joint-Stock Company aka Minh Hai Export Frozen Seafood Processing Joint-Stock Co., aka Minh-Hai Export Frozen Seafood Processing Joint-Stock Company	1.03%
Minh Hai Joint-Stock Seafoods Processing Company (“Seaprodex Minh Hai”) aka Sea Minh Hai aka Minh Hai Joint-Stock Seafoods Processing Company aka Seaprodex Minh Hai aka Seaprodex Min Hai aka Seaprodex Minh Hai (Minh Hai Joint Stock Seafoods Processing Co.) aka Seaprodex Minh Hai Factory aka Seaprodex Minh Hai Factory No. 69 aka Seaprodex Minh Hai Workshop 1 aka Seaprodex Minh Hai-Factory No. 78 aka Workshop I Seaprodex Minh Hai	1.03%
Minh Hai Sea Products Import Export Company (“Seaprimex Co”) aka Ca Mau Seafood Joint Stock Company (“SEAPRIMEXCO”) aka Seaprimexco Vietnam aka Seaprimexco aka Ca Mau Seafood Joint Stock Company (“Seaprimexco”) aka Minh Hai Seaproducts Import Export Corporation aka Seaprimexco aka Minh Hai Seaproducts Co Ltd. (Seaprimexco) aka Ca Mau Seafood Joint Stock Company (“Seaprimexco Vietnam”)	1.03%

Ngoc Sinh Private Enterprise aka Ngoc Sinh Seafoods aka Ngoc Sinh Seafoods Processing and Trading Enterprise aka Ngoc Sinh Fisheries aka Ngoc Sinh Private Enterprises aka Ngoc Sinh Seafoods Processing and Trading Enterprises aka Ngoc Sinh aka Ngoc Sinh Seafood Processing Company aka Ngoc Sinh Seafoods (Private Enterprise)	1.03%
Ngoc Tri Seafood Joint Stock Company	1.03%
Nhat Duc Co., Ltd. Nhat Duc Co., Ltd. (“Nhat Duc”)	1.03%
Nha Trang Fisheries Joint Stock Company (“Nha Trang Fisco”) aka Nha Trang Fisheries Joint Stock Company aka Nhatrang Fisheries Joint Stock Company aka Nha Trang Fisco aka Nhatrang Fisco aka Nha Trang Fisheries Joint Stock Company (“Nha Trang Fisco”) aka Nha Trang Fisheries, Joint Stock aka Nha Trang Fishereies Joint Stock Company (Nha Trang Fisco)	1.03%
Phu Cuong Seafood Processing and Import-Export Co., Ltd. aka Phu Cuong Seafood Processing and Import Export Company Limited aka Phu Cuong Jostoco Corp.	1.03%
Phuong Nam Co., Ltd. (“Phuong Nam”) aka Western Seafood Processing and Exporting Factory (“Western Seafood”) aka Phuong Nam Foodstuff Corp. aka Phuong Nam Co. Ltd.	1.03%
Sao Ta Foods Joint Stock Company (“Fimex VN”) aka Sao Ta Foods Joint Stock Company aka Fimex VN aka Sao Ta Seafood Factory aka Saota Seafood Factory	1.03%

Soc Trang Aquatic Products and General Import Export Company (“Stapimex”) aka Soc Trang Seafood Joint Stock Company (“Stapimex”) aka Soc Trang Seafood Joint Stock Company aka Soc Trang Aquatic Products and General Import Export Company aka Stapimex aka Soc Trang Aquatic Products and General Import Export Company-(Stapimex) aka Stapimex Soc Trans Aquatic Products and General Import Export Company aka Stapmex	1.03%
Thuan Phuoc Seafoods and Trading Corporation aka Frozen Seafoods Factory No. 32 aka Seafoods and Foodstuff Factory aka My Son Seafoods Factory aka Seafoods and Foodstuff Factory Vietnam	1.03%
UTXI Aquatic Products Processing Company aka UT XI Aquatic Products Processing Company aka UT-XI Aquatic Products Processing Company aka UTXI aka UTXI Co. Ltd., aka Khanh Loi Seafood Factory aka Hoang Phuong Seafood Factory aka UTXI Aquatic Products Processing Corporation (“UTXICO”) aka UTXI Aquatic Products Processing Corporation aka UTXICO	1.03%
Viet Foods Co., Ltd. aka Nam Hai Foodstuff and Export Company Ltd.	1.03%
Viet Hai Seafood Co., Ltd. aka Vietnam Fish One Co., Ltd. (“Fish One”) aka Viet Hai Seafoods Company Ltd. (“Vietnam Fish One Co. Ltd.”)	1.03%
Vietnam Clean Seafood Corporation aka VINA Cleanfood	1.03%
Vietnam-wide Entity	25.76%

Public Comment

The Department will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of these preliminary

results.⁷⁰ Interested parties may submit written comments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs) within five days after the time limit for filing case briefs.⁷¹ Rebuttal briefs must be limited to issues raised in the case briefs.⁷² Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Interested parties, who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, filed electronically using Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System ("IA ACCESS"). An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Standard Time within 30 days after the date of publication of this notice.⁷³ Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined.⁷⁴ Parties should confirm by telephone the date, time, and location of the hearing.

Unless the deadline is extended pursuant to section 751(a)(2)(B)(iv) of the Act, the Department will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days after issuance of these preliminary results.

⁷⁰ See 19 CFR 351.224(b).

⁷¹ See 19 CFR 351.309(c)(1)(ii) and 351.309(d)(1).

⁷² See 19 CFR 351.309(d)(2).

⁷³ See 19 CFR 351.310(c).

⁷⁴ See 19 CFR 351.310.

Deadline for Submission of Publicly Available Surrogate Value Information

The deadline for submission of publicly available information to value FOPs under 19 CFR 351.408(c) is 20 days after the date of publication of these preliminary results.⁷⁵ If an interested party submits factual information less than ten days before, on, or after (if the Department has extended the deadline), the applicable deadline for submission of such factual information, an interested party may submit factual information to rebut, clarify, or correct the factual information no later than ten days after such factual information is served on the interested party.⁷⁶ However, the Department notes that 19 CFR 351.301(c)(1), permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record.⁷⁷ Furthermore, the Department generally will not accept business proprietary information in either the surrogate value submissions or the rebuttals thereto, as the regulation regarding the submission of surrogate values allows only for the submission of publicly available information. Additionally, for each piece of factual information submitted with surrogate value rebuttal comments, the interested party must provide a written explanation of what information that is already on the record of the ongoing proceeding that the factual information is rebutting, clarifying, or correcting.

Assessment Rates

Upon issuing the final results of the review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. We will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the

⁷⁵ See 19 CFR 351.301(c)(3).

⁷⁶ See 19 CFR 351.301(c)(1).

⁷⁷ See, e.g., Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part, 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales.⁷⁸ We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis*. However, the final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

Cash Deposit Requirements

The following cash deposit requirements, when imposed, will apply to all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Nha Trang Seaproduct Group and Minh Phu will be the rate established in the final results of this administrative review; (2) for any previously reviewed or investigated Vietnam or non-Vietnam exporter, not covered in this administrative review, with a separate rate, the cash deposit rate will be the company-specific rate established in the most recent segment of this proceeding; (3) for all other Vietnam exporters, the cash deposit rate will continue to be the Vietnam-wide rate (i.e., 25.76 percent); and (4) the cash-deposit rate for any non-Vietnam exporter of subject merchandise from Vietnam will be the rate applicable to the Vietnam exporter that supplied that exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to

⁷⁸ See 19 CFR 351.212(b)(1).

liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213.

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

February 28, 2012
Date

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